



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

1250 W Alder St • Union Gap, WA 98903-0009 • (509) 575-2490

January 28, 2016

Lawrence R. Pearson  
20206 E. 583 PR NE  
Benton City, WA 99320

Re: Ground Water Permit No. G4-28362P

Dear Mr. Pearson:

On October 30, 2015, the Department of Ecology (Ecology) received fees and an extension request for Groundwater Permit No. **G4-28362P**. In response to your request, you are hereby **denied** an extension of time in which to put the water to full beneficial use.

Application No. G4-28362 was accepted by Ecology on December 28, 1983 and was permitted on October 15, 1984, authorizing 450 gallons per minute (gpm) and 312 acre-feet per year (af/yr) for community domestic supply for up to 36 homes and for irrigation of up to 60 acres. According to Ecology's statewide 2013 aerial photography, it appears that approximately 9 homes exist and approximately 80 acres of irrigation are presently irrigated. The following is a brief history of the original Permit since 2003:

PERMIT ACTION	DATE
Application for Change (CG4-28362P) to add point of withdrawal and change place of use (2.5 acres) was received.	12-10-2003
Approval of Change Authorization as modified by Ecology.	1-12-2004
Second Application for Change (CG4-28362@1) to add another point of withdrawal was received.	7-7-2004
Second Approval of Change Authorization as modified by Ecology.	8-17-2004
Completion of Construction Notice received but was not formally accepted by Ecology.	12-10-2007
Extension Request for CG4-28362@1 in Completion of Construction stage received by Ecology.	12-21-2011
Extension Approval until February 29, 2012 issued.	1-10-2012
Completion of Construction Notice re-received and accepted by Ecology.	2-28-2012
Incomplete Partial Assignment form received for portion of original Permit.	3-25-2013
Extension Approval until November 2014.	11-2013



PERMIT ACTION	DATE
Ecology technical assistance letter to applicant outlining steps to take toward Assignments, Super Permits, and Showing of Compliance requirements.	11-4-2014
Extension Request (identical to request in 2011) in Proof of Appropriation stage received by Ecology.	11-9-2015 (see above)

A Permit holder is required under RCW 90.03.320 to pursue the completion of a project with due diligence. The Permit development schedule was originally set to apply the water to full beneficial use by October 1, 1987 and was extended to November 1, 2006 via the second Change approval.

As evidenced by the exceptionally long history of this file and due to the duplicative nature of the extension request submitted in 2011, due diligence has not been shown and there is no support that an extension is needed, as it appears the system is completely operational and in use. The two reasons given for needing an extension of time: the desire to gather information from landowners and/or to assign portions of the Permit to neighboring land owners are not factors Ecology can consider to affirmatively approve your extension request.

The long delay in perfecting this Permit is contrary to the public interest. The State Water Code does not allow the reservation of water for use at an unspecified time in the future. As such, due to the apparent ongoing lack of effort or due diligence, Ecology cannot conclude that the development of the permitted project is being pursued in good faith and with due diligence.

There have historically been several Pollution Control Hearing Board (PCHB) cases in which they ruled on criteria for granting extensions of time to develop beneficial use under a Permit.

The following are Pollution Control Hearings Board (PCHB) examples illustrating reasons why Ecology is denying this extension:

- Good cause for further extension of development schedule was not shown where ground water appropriation was uncompleted after six years and no evidence was presented indicating a likelihood of imminent progress toward completion. Taggares v. Ecology, PCHB No. 79\*-174 (1980).
- A permittee may not maintain a Permit indefinitely, because to do so makes the water unavailable to others who might wish to put it to a beneficial use. The Permit is by nature an intermediate stage in the creation of the water right and must be diligently pursued to be maintained. Oroville-Tonasket Irrigation District v. Ecology, PCHB Nos. 91-170 & 93-134 (1996).
- Time requirements for completion of appropriations are essential in the public interest. When allocating water, Ecology deducts the amount represented by outstanding Permits even though the water has not yet been put to full beneficial use. Those granted Permits that have not completed their projects have the potential to block subsequent applicants from obtaining water. Case v. Ecology, PCHB No. 89-114 (1990).



- Given that fourteen years have passed since the appellant received such permit, appellant had not developed the permit with due diligence. Any further extension would be unreasonable since the appellant estimated that he needed another six years to develop the permit. Peterson v. Ecology, PCHB No. 94-265 (1995).
- Increased scrutiny must be exercised by Ecology because this permit is “long-standing,” and based on the file history, where there have been fits and starts with sporadic efforts to pursue the project and there has been a significant amount of time since the Permit was issued and there are significant times when there was no substantial activity. Concerned Neighbors of Lake Samish v. Ecology, PCHB Nos. 11-26, 11-127, and 11-128 (2012).

Consistent with the reasons given above, the lack of due diligence and commitment to putting the water to full beneficial use does not meet the statutory criteria.

Per Ecology’s phone call with you on January 19, 2016, it is our understanding that you still wish to keep active the portion of the project that is complete. To that end, the following steps must be taken to avoid cancellation of the Permit:

- **A Proof of Appropriation notice must be submitted to Ecology within sixty (60) days of receipt of this letter.** Ecology must have verification of your water use before issuing a *Certificate of Water Right*.
- After submittal of the *Proof of Appropriation* notice, your next step is to hire a certified water right examiner (CWRE) to perform a field inspection of your water use and prepare a *Proof Report of Examination and Recommendation Summary* and submit to Ecology. You can find a list of certified water right examiners at <http://www.ecy.wa.gov/programs/wr/rights/cwrep.html>, or you may call the CWRE Coordinator at (360) 407-6450 and request that a copy of the list be mailed to you.

Ecology will make decisions on certificating your water right after reviewing the report and the recommendations of the CWRE.

## **YOUR RIGHT TO APPEAL**

You have a right to appeal this Decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Decision. The appeal process is governed by chapter 43.21B RCW and chapter 371-08 WAC. “Date of receipt” is defined in RCW 43.21B.001(2).

To appeal you must do all of the following within 30 days of the date of receipt of this Decision:

- File your appeal and a copy of this Decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in chapter 43.21B RCW and chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION	
Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503  <b>Pollution Control Hearings Board</b> 1111 Israel Road SW, Suite 301 Tumwater WA 98501	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608  <b>Pollution Control Hearings Board</b> PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>  
To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

If you have any questions or concerns about this information, please call the Water Resources Help Desk at (509) 575-2597.

Sincerely,



Thomas Perkow, Acting Section Manager  
Water Resources Program  
Central Regional Office

TP:CLG:SS/151128  
WR ID# 2284027

Enclosures: Your Right to be Heard  
Proof of Appropriation form  
FAQ - Hiring A Certified Water Right Examiner

By certified mail: 7010 0290 0000 7126 8931